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November 23, 1993

Mr. William F. Caton  
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1919 M Street, NW  
Washington, DC 20054


Re: Implementation of Sections 3(n) and 332 of the  
Communications Act - Regulatory Treatment of Mobile  
Services (GN Docket No. 93-252)

Dear Mr. Caton:

Transmitted herewith on behalf of Telephone and Data Systems, Inc. are an original and nine copies of its Reply Comments in the above-captioned proceeding.

In the event that there are any questions concerning this matter, please communicate with the undersigned.

Very truly yours,

  
George Y. Wheeler

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

NOV 23 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Implementation of Sections 3(n) ) GEN Docket No. 93-252  
and 332 of the Communications Act) )  
 )  
Regulatory Treatment of Mobile )  
Services )

To: The Commission

REPLY COMMENTS OF  
TELEPHONE AND DATA SYSTEMS, INC.

Telephone and Data Systems, Inc., on behalf of itself and its subsidiaries (collectively "TDS"), by its attorneys, submits its reply comments in the above-captioned proceeding.<sup>1</sup>

We believe that the proposals presented in our comments reasonably balance the Commission's longstanding objectives to promote consumer benefits and protection and the budgetary realities which have propelled White House efforts to "reinvent government" including reevaluation of longstanding regulatory programs. For example, we support reclassification of conventional paging as a private service because this makes sense in terms of what should be the Commission's regulatory priorities.

Similarly, we believe that licensees should have the flexibility to offer CMS or private services, or both, because this promotes spectrum efficiency, expanded competition, innovative

<sup>1</sup> A list of parties filing Comments in these proceedings, including the abbreviated names used for reference in these Reply Comments, is Attachment A hereto.

service offerings, competitive rates to consumers and widespread availability of a full range of services. This flexibility is the fundamental underpinning of regulatory parity and the perception of fair competitive opportunities which promotes expanded competition and resulting consumer benefits. This means that systems initially classified private should be able to offer CMS services and that systems authorized to provide CMS services should have comparable options to provide private services.

We also strongly believe that the Commission should apply the guidelines--articulated in its Competitive Bidding proceedings--to promulgate rules which are "simple and easy to administer," to avoid "unnecessary complexity" and to promote rules and policies that "minimize costs to applicants and the Commission"<sup>2</sup> when it makes its decisions in this docket. Our proposals meet these objectives as well.

#### Discussion

In the remaining sections of these reply comments, we discuss six aspects of the Commission's proposals to respond to the arguments of others and to support the positions of other commenters on points not discussed in our comments.

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<sup>2</sup> See the Commission's Notice of Proposed Rulemaking in Competitive Bidding, PP Docket No. 93-253, released October 12, 1993, ¶ 18.

1. Cellular And Other Common Carrier Radiotelephone Licenses Should Be permitted To Offer Dispatch Services

We concur with the numerous commenters supporting the expansion of permissible services for cellular and other CMS providers to include dispatch, enhanced and ancillary fixed offerings. With the very substantial expansion of spectrum devoted to mobile services and numerous new licensing opportunities created during the last three years, there is no reason to limit the efficient use of this spectrum for the widest variety of publicly beneficial offerings. CMS providers will have adequate spectrum to offer a full range of services including dispatch services. The resulting increase in competition can be expected to produce important public benefits in terms of competitive rates, availability and quality of services.

We strongly object to the arguments of E.F. Johnson, Geotek, Motorola and Nextel that the Commission's dispatch prohibitions should be retained for three years to prevent cellular and other existing CMS providers from offering fleet dispatch services. This blatantly selective exclusion of existing common carriers, including cellular, is precisely the form of discriminatory and unfair regulation which the provisions of Section 332 of the Act were enacted to prevent. There is no reason why the customers of cellular systems should be prevented from gaining access to dispatch-type services furnished via cellular technologies,

particularly if its competitors using broadband PCS or ESMR technologies are not limited in this regard.<sup>3</sup>

2. Mandatory Interconnection Between CMS Providers Should Not Be Required.

We agree with the numerous commenters opposing mandatory interconnection between commercial mobile service providers. We identified the promotion of regional roaming, among adjacent standalone (non-regional) CMS systems in the same radio service as the one area where the commission should require CMS-to-CMS interconnection because of the important public benefits.

3. The Commission Should Carry Forward Existing Policies Governing Interconnection Between LECs And CMS Providers.

The Commission's policies governing interconnection between CMS providers and the LECs should be based upon and carry forward its established interconnection policies under Part 22 of the Commission's rules. Preemption by the Commission of state regulation over the right of CMS providers to interconnect with LECs and over the types of interconnection LECs provide for interstate service should be adopted as proposed. States should retain the right to set interconnection rates relating to all

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<sup>3</sup> Several commenters have requested that the Commission eliminate the telephone common carrier eligibility restriction upon holding SMR licenses. We agree that this eligibility restriction should be discarded now that Congress has made possible the reclassification of SMR services for CMS offerings under the revised language of Section 332 of the Act.

revenues received by LECs from interconnection of intrastate mobile calls originating from CMS systems.

4. Equal Access Obligations Should Not Be Imposed Upon Any Class of CMS Provider.

We also agree with the numerous comments opposing the imposition of equal access obligations upon any class of CMS provider, including PCS. Imposing such obligations is unnecessary considering the rapidly expanding number of new competitive mobile service offerings available or soon to be available in each market area. We believe that the consumer benefits from rapid and unfettered expansion of competitive mobile service offerings far outweigh the speculative claims made in support of intrusive and burdensome equal access requirements.

5. Cellular Resellers Should Not Be Granted "Interconnection" Rights With Respect To Cellular Licensees.

We oppose the proposals made by the NCRA in their comments that cellular resellers be granted full interconnection rights with cellular licensees and that regulation of wholesale cellular rates be undertaken by the Commission. We also oppose the recommendation of NCRA that cellular carriers be made to bear the "burden of proof" in complaint proceedings brought by resellers under Section 208 of the Act.

TDS submits that the FCC should not grant to cellular resellers the interconnection rights to which CMS providers will be entitled. The situation of cellular resellers, who seek a guaranteed profit at the expense of cellular systems, cannot be

analogized to that of the competitive access providers recently granted interconnection rights with "bottleneck" LEC facilities. Cellular systems, which serve a small fraction of the telephone market, are simply not comparable to local telephone companies serving all of an entire region. They do not have the same market power and market power should be the decisive factor in determining whether regulation of interconnection is warranted.

Similarly, the Commission should not impose price controls on cellular systems. Nor should the Commission reverse years of precedent and place the burden of proof on cellular carriers rather than the complainants in Section 208 proceedings. Again to do so would be to place needless burdens on one of the most energetic, productive, and socially beneficial of all Commission regulated industries. The draconian proposals of NCRA are self-interested "solutions" to a non-problem. They should be rejected by the Commission.

6. The Commission Should Forebear From Requiring CMS Providers To Comply With Section 226 Of The Act.

We are persuaded by the commenters who argue that the Telephone Operator Consumer Services Improvement Act ("TOCSIA") should not apply to CMS service offerings.<sup>4</sup> The Commission should not diminish the full benefits of a vigorously competitive mobile services industry by subjecting it to burdensome and unnecessary restrictions under TOCSIA. As discussed separately in these reply comments, the CMS provider industry is in the

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<sup>4</sup> Section 226 of the Act.

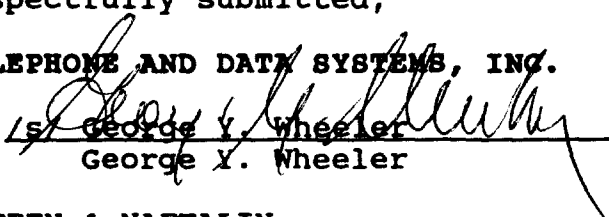
midst of a widespread and vigorous expansion. The resulting consumer benefits include a wide variety of service offerings by CMS providers who will be competing based upon reasonable and non-discriminatory rates and practices. Telocator makes clear that the types of abuses which TOCSIA was intended to prevent have not arisen in the mobile service industry and accordingly that regulatory forbearance should be exercised not to subject CMS providers to its requirements.

Conclusion

We have presented proposals in our comments, as supplemented here, which we believe represent the best combination of the deregulatory and forbearance options available to the Commission. We have been careful to propose implementation structures which preserve the "level playing field" concepts underlying the Congressional mandate in Section 332 of the Act. We request that such proposals be adopted.

Respectfully submitted,

TELEPHONE AND DATA SYSTEMS, INC.

By  /s/ George Y. Wheeler  
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November 23, 1993

Its Attorneys



Attachment A

List of Parties Commenting in PP Docket No. 93-252

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Allcity Paging, Inc.	("AllCity")
American Mobile Telecommunications Association, Inc.	("AMTA" or Association")
American Petroleum Institute	("API")
Ameritech	("Ameritech")
AMSC Subsidiary Corporation	("AMSC")
Arch Communications Group, Inc.	("Arch")
Association of American Railroad	("AAR")
Association of Public-Safety Communications Officials-International, Inc.	("APCO")
BellSouth Corporation, BellSouth Telecommunications, Inc., BellSouth Cellular Corp., and Mobile Communications Corporation of America	("BellSouth")
Cellular Telecommunications Industry Association	("CTIA")
Celpage, Inc., Network USA, Denton Enterprises, Copeland Communications & Electronics, Inc, and Nationwide Paging	("Joint Commenters")
CenCall Communications Corporation	("CenCall")
Century Cellunet, Inc.	("Century")
Comcast Corporation	("Comcast")
Corporate Technology Partners	("CTP")
Cox Enterprises, Inc.	("COX")
E.F. Johnson	("E.F. Johnson" or "the Company")
General Communication, Inc.	("GCI")

Geotek Industries, Inc.	("Geotek")
Grand Broadcasting Corporation	("Grand Broadcasting")
GTE Service Corporation	
Hardy & Carey, L.L.P.	("Hardy & Carey")
Illinois Valley Cellular RSA 2 Partnerships	("IVC Partnerships")
Industrial Telecommunications Association, Inc.	("ITA")
In-Flight Corporation	
Liberty Cellular, Inc. d/b/a Kansas Cellular	("Liberty")
Lower Colorado River Authority	("LCRA")
McCaw Cellular Communications, Inc.	("McCaw")
MCI Telecommunications Corporation	("MCI")
Metricom, Inc.	("Metricom")
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National Association of Business and Educational Radio, Inc.	("NABER")
National Cellular Resellers Association	("NCRA")
National Telephone Cooperative Association	("NTCA")
The New York State Department of Public Service	("NYDPS")
New Par	
Nextel Communications, Inc.	("Nextel")
North Pittsburgh Telephone Company	("NPTC")
NYNEX Corporation	("NYNEX")
Pacific Bell and Nevada Bell	
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PacTel Corporation	("PacTel")

PacTel Paging	("PacTel")
Paging Network, Inc.	("PageNet")
PageMart, Inc.	("PageMart")
People of the State of California and the Public Utilities Commission of the State of California	("CPUC")
Personal Radio Steering Group, Inc.	("PRSG")
Pioneer Telephone Cooperative, Inc.	("PTC")
Pioneer Telephone Cooperative, Inc. - Cellular	("PTC-C")
PN Cellular, Inc.	("PNC")
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Rochester Telephone Corporation	("Rochester")
Rockwell International Corporation	("Rockwell")
Rural Cellular Association	("RCA")
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CERTIFICATE OF SERVICE

I, Abbie Weiner, a secretary in the law firm of Koteen & Naftalin, do hereby certify that a copy of the foregoing "Reply Comments of Telephone and Data Systems, Inc.", was sent by first class U.S. mail, postage prepaid, on this 23rd day of November, 1993 to the offices of the following:

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